The utilities were also critical of Staff proposals regarding the scheduling of makeready work and the use of contract labor for this purpose. Central Hudson argued that in scheduling makeready work the utilities must have complete flexibility in the use of outside plant personnel, and that, for safety and reliability reasons, the electric companies must have complete control over the work done on their lines. It was doubted that private contractors who install CATV systems would be interested in doing contract electrical work. NYT argued that the use of contract labor was unnecessary, and the use of contractor could pose labor problems for the Company. Regardless of whether its union would be justified (in view of the specific provisions of the current labor contract) NYT urged that problems could ensue in any event. It was suggested that the union may see the use of contract labor as a possible deprivation of overtime or the chance to expand membership.

The utilities also reasserted their views with respect to the propriety of inspection charges. Niagara Mohawk argued that if the cost of inspection were included in pole rental fees various CATV firms could be penalized if it developed that no inspections were needed.

The utilities took very strong exception to the Staff's ultimate recommendation that the PSC should assume jurisdiction over pole attachment agreements and prescribe terms and conditions therefore. Niagara Mohawk added that, to its belief, the PSC has never prescribed terms and conditions of joint agreements between regulated utilities already under the PSC's jurisdiction.

Discussion

In the preceding section it was concluded that neither CCTV nor the PSC has jurisdiction over the substantive issues which have been outlined above. It was also concluded, however, that both agencies have authority to investigate matters of obvious concern and that the allegations contained within the Association's original Petition for Investigation were appropriate subjects for investigation by either agency.

Basically, there are two purposes for a fact-finding investigation by a regulatory agency. First, the agency may wish to develop facts in order to ascertain what further regulatory action, if any, should be considered. With respect to CCTV no further regulatory action can be contemplated because it is apparent that CCTV has no jurisdiction to enter further into the pole attachments and related agreements arena. The PSC has limited jurisdiction in this area, namely, to see that the utilities have not entered into agreements which impair or threaten to impair service or otherwise compromise the interests of ratepayers. It is abundantly clear from this record that the utilities have been scrupulous in insuring the adequacy of service and in protecting ratepayers. No facts have emerged which would provide the PSC with a basis for exercising its limited jurisdiction by way of further regulatory action.

The second purpose for developing facts by way of investigation is to ascertain whether it is appropriate or necessary to petition the Legislature for a further jurisdictional grant. It was this purpose, inter alia, that provided a basis for the denial of motions made by several utilities to dismiss them as parties, to admit the controversial testimony of Staff Witness Sieg and for the discussion to follow.

At the outset, however, mention should be made of some of the reasons appearing on this record that would tend to negate the need for additional jurisdiction.

1. It has been indicated on brief, and the record reveals, that several of the utilities have had no problems in their relationship with CATV operators. CATV witnesses testified as to acceptable relationships with RTC, Orange & Rockland, and Central Hudson. Also, there has been no showing on this record of any problems with respect to General Telephone, LILCO, NYSEG, Consolidated Edison, or RG&E. In the absence of problems, these utilities can make a very powerful argument against the extension of regulatory jurisdiction. Government participation seldom improves a business relationship that is otherwise good.

2. As noted, the Association sponsored evidence only with respect to NYT and Niagara Mohawk. By comparison, the complaints against Niagara Mohawk were minor and in its reply brief the Petitioner limited its comments to issues surrounding NYT. In effect, therefore, we are here considering a number of complaints directed

toward one utility for the most part. Any assessment of a need for additional legislation should take this fact into account.

3. The record reveals a number of difficulties and frustrations experienced by CATV operators in their dealings with NYT, but the record does not reveal that as a result of these dealings CATV operators have suffered economic harm or that CATV's development has been impaired. CATV operators have not been denied access to poles.

These are important considerations, but they must be evaluated along with a number of others. Also to be considered is the import of the Staff's contribution to this case, whether the contracts in issue are unreasonable on their face, whether NYT has acted unreasonably in interpreting or implementing these agreements or whether there are any other reasons which would tend to compel a petition to the Legislature for additional jurisdiction.

In view of the conclusions reached earlier with respect to jurisdiction none of the proposals advanced by the Staff will be recommended for action by the PSC as the Staff has requested. Staff testimony and the Staff's position were considered important as indicators of possible regulatory inspired solutions and, therefore, one measure of the need for further jurisdiction. Upon review, however, it would appear that the Staff's recommendations are inconclusive. Utility response appropriately indicated that fuller evaluation is required, however, the utilities did not offer rebuttal

testimony. Utility participation aside, there may be some question concerning the Staff analysis, particularly with respect to the impact of its proposals on electric utilities. The proposal calling for CATV ownership in replacement poles invoked a utility reaction that was largely negative, but interestingly enough the Association did not endorse it; in fact it appears that CATV owners may not be interested in having an ownership interest in poles.[24/] While the utilities generally opposed the Staff recommendations, and the Association applauded the effort, the Association was quite indefinite as to the extent to which it would support the Staff proposals. This record will not permit an evaluation of the impact that could be expected on a relationship between utilities and CATV operators from pursuing the Staff proposals.

The record is clear that pole attachment agreements are not negotiated, but the fact that the utilities merely offer prepared contracts rather than negotiate them, however, is not here regarded as critical. Essentially, CATV operators rent space on property owned by the utilities and normal business practice would call for the owner of the property to establish the terms and conditions under which a license is granted. Nor is it critical that only one contract form is offered. NYT may not be accurate in its assertion

24/ Robert Miron of New Channels Corporation testified that he had no interest in owning any portion of a pole and that it would be too expensive.

that the single contract form eliminates the possibility of discrimination, however, the record does not show any CATV company having been harmed by its use. The question is, however, whether the contract terms and conditions imposed upon CATV operators are unreasonable on their face and, therefore, demanding of regulatory intervention.

The utilities would acknowledge the fact that pole rental agreements are drafted with the protection of the utilities' service paramount, and that CATV use is regarded as an accommodation or secondary use.25/ Even CATV operators must acknowledge that while their service is a modern convenience thoroughly enjoyed by many it is not a daily household necessity as is electric and telephone service. As was pointed out several times on brief, the utilities are under a statutory mandate to deliver an adequate, safe and reliable service. The PSC places a very high priority on service. As an example, telephone companies are required to meet service standards in a variety of categories and report results monthly. Utilities face the possibility of penalty and severe criticism if service deteriorates. Inadequate service has had an impact on requests for rate relief and for permission to expand service. The priorities the utilities give their own services in the context of pole attachment agreements is not unreasonable.

25/ As noted, these considerations are cited in the NYT pole attachment agreement.

Of the various agreements outstanding, the Association has raised complaints only with respect to the pole attachment agreement offered by NYT and to a much lesser extent to the pole attachment offered by Niagara Mohawk. In its opening brief the Association also directed a very general challenge to NYT's underground or conduit agreement. Since NYT's pole attachment has been singled out as the "lightning rod" of this proceeding, attention here will be directed to that document. The Association has raised specific exception to the following provisions:

1. The WHEREAS clause. Under this clause the licensor states his willingness to permit attachment to its poles where such use will not interfere with its service requirements.

2. Article II(c). This provision recognizes the existence or possible existence of joint use between the licensor and other parties and states that the rights of the licensee shall at all times be subject to present or future joint use arrangements.

3. Article VI(b). Any license granted for attachment shall terminate without further notice when attachment has not been made within 90 days from the date of the license.

4. Article VII(a) pole replacements and rearrangements. This is a lengthy provision containing several of the terms and conditions that the Association has found objectionable. This provision notes that the licensee's use will be secondary and that

the agreement is an accommodation to the licensee. The licensor reserves the right to refuse to grant a license when it is determined by the licensor that space is required for its exclusive use or the use of joint users or that the pole may not be reasonably rearranged or replaced to accommodate the licensee. This provision also calls for the making of surveys by the licensor in consultation with any joint user and with the licensee if so desired. It is also provided that the licensor shall determine whether poles are available, whether rearrangements or changes are necessary, whether any poles require guying and anchoring and whether any poles require replacement. At the licensor's option guying and anchoring will be done either by the licensor or the licensee. It is also provided that the licensor shall notify the licensee as to which poles are available for attachment and as to the makeready work which is required to be performed together with an estimate of the charges for such makeready work. Upon request the licensor will make sufficient information available so that the licensee can satisfy itself as to the makeready work contemplated and the charges estimated. The licensor also agrees to consider any objections, but final decision as to the necessity of makeready work and as to the cost estimate resides in the licensor.

5. Article VII(e). This provision acknowledges the possibility of post attachment makeready work. The decision as to necessity rests with the licensor and the licensee is responsible for the costs associated with its own facility.

6. Article IX(a). This provision calls for the immediate termination of the license upon notice that the use of any pole is not authorized by federal, state, county or municipal authorities or private property owners. The licensee is responsible for the moving of its own attachments, and if compliance has not been had within 10 days the licensor may remove those attachments at the licensee's expense.

7. Article X(a). This provision calls for the making of periodic surveys and inspections by the licensor and inspections of new installations at any time. Inspections or surveys of the entire plant of the licensee will not be made more often than once a year unless in the licensor's judgment inspections are required for reasons involving safety or because of alleged violations.

8. Article XIV(a). If the licensee fails to comply with any terms or conditions of the agreement or if it defaults on any of its obligations under the agreement and shall fail to correct the same within 30 days after written notice the licensor, at its option, may terminate the agreement and all licenses or, at its further option, terminate only those licenses covering the poles to which default or noncompliance relates.

9. Article XIV(b). Under this provision the licensor retains the absolute right to terminate the entire agreement or individual licenses granted under the agreement without notice.

10. Appendix 2, specifications. As noted the Association has claimed, in effect, that the specifications herein set forth are indefinite and uncertain.

The pole attachment agreement which is here at issue is a business arrangement not unlike other business arrangements in terms of format, terms and conditions. Its reasonableness must be viewed in that light. Its reasonableness must also be viewed in the light of NYT's public service obligations, particularly the very high priority that must be given to service adequacy and reliability.

The terms of this agreement indicate that NYT has not gone out of its way to advance the interests of CATV, but it does not appear that the terms of the agreement have impeded the development of CATV or made its growth impossible. It cannot be concluded that any of the pole attachment provisions cited are unreasonable with the exception of XIV(b).[26] This provision, extending to NYT the absolute right to terminate the agreement has not been exercised arbitrarily by present or past management. There is no guarantee, however, that such action may not be taken in the future. CATV must have access to established rights-of-way. While access is important for the promotion of CATV's business interest, it is also important for the rendition of a service which has been found by the Legislature to embrace special public interest considerations. Absent failure on CATV's part to meet the more critical terms and conditions of the pole attachment agreement, CATV operators should not have to live in the shadow of XIV(b). No reason appears why this provision is necessary to protect NYT's telephone

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26/ Other provisions, however, could be improved. For example, the termination provision for failure to attach within 90 days [Article VI(b)] could be modified to exempt failures beyond the licensee's control. Article II(c) might be modified to show that the licensee's use is subject to joint utility use.

service or any other interest. If regulatory jurisdiction were to be exercised, a strong argument could be made for the deletion of this provision as unreasonable.

Another criterion here adopted to assist in the assessment of the need for regulatory jurisdiction over pole attachment and related agreements is an evaluation of the reasonableness of the interpretation of agreements by the utilities as well as the practices and policies used for implementation. The charges by the Association against NYT, and to a lesser extent against Niagara Mohawk, fall into the following categories:

1. Issues relating to charging practices. Within this category would fall complaints relating to the recalculation of private contractor costs on the basis of NYT's hourly loaded rates, NYT's refusal to bill on a monthly basis, the advance payment requirement with respect to makeready work and the 10 percent add-on to hourly loaded rates by NYT.

2. Issues relating to surveys and makeready work. In this area the Association raised complaints with respect to the failure to give notice of surveys, overestimates of makeready charges, frequent personnel changes by NYT, the inspection of utility plant when surveys are conducted, the refusal of NYT to employ private contractors, the refusal of NYT to deliver a specified number of poles within a specified time, the failure to perform makeready in a continuous manner, CATV's inability to monitor the effectiveness of NYT's makeready crews, NYT's refusal to allow depreciation on pole change-outs and delays in completing makeready work.

3. Right-of-way issues. Issues here would include guying and anchoring and obtaining easements.

4. Inspections. The Association has charged that NYT's inspection policy is being used to punish CATV operators and that inspection procedures are used for the inspection of NYT plant at CATV's expense.

In the course of its evidentiary presentation the Association produced CATV operators and employees of CATV companies who testified with respect to a number of difficulties, misunderstandings, and frustrations that have been experienced. There is no question as to the sincerity of the testimony thus adduced; there is no question that problems have been experienced. To conclude that the Company has acted unreasonably, however, would require the showing of a pattern of patently unreasonable conduct or that the Company consciously sought to act in a manner that would punish CATV or frustrate its legitimate goals. No patter has emerged and the very difficult burden of showing conscious design has not been carried.

After reviewing the complaints raised with respect to policies and practices, the following conclusions have emerged:

While some of Niagara Mohawk's practices and policies have been criticized, there are no changes that would be here recommended. As to NYT, however, some of the criticisms raised have merit.

NYT's attitude toward CATV appears to be both demanding and uncompromising. NYT cannot be criticized for giving priority to the unforeseen requirements of telephone work, but greater flexibility in

Company practices and policies would do much to ease the friction that has developed and to relieve the understandable frustration felt by CATV. No issue will be taken here with respect to NYT's charging practices although it appears that the policy of adding 10 percent to loaded labor rates makes NYT's services the most expensive available to CATV. It would appear, however, that NYT could explore the possibility of adopting survey and makeready practices similar to those employed by Niagara Mohawk. Worthy of specific note is Niagara Mohawk's policy of giving makeready estimates during surveys and not charging for makeready work until after its completion. Despite NYT's confidence in its ability to accurately estimate the cost of makeready work, it appears that overcharges do occur while undercharges do not; this is a needless burden to impose upon business concerns with whom NYT has had continuing relationships. It does not appear that Niagara Mohawk's service or ratepayers have been compromised by its policy. Improvements could be made by NYT with respect to performing makeready work in a manner to avoid "pockets" in CATV development, delivering a given number of poles in a specified period of time and insuring that adequate notice of survey work is given. Greater flexibility in the use of private contractors is also a possibility. All competence does not reside in the Bell System; this fact is recognized by the Bell System itself through its employment of outside sources for services and equipment.

The Company's concern with labor relations is not a compelling argument. It would seem that there is much more room to explore the contractor possibility than the Company has been willing to admit. There is one further area in which some criticism is due. NYT's employees would be derelict in their duties if they failed to report violations in the Company's plant observed while conducting surveys or while inspecting CATV attachments. The Company could and should acknowledge this rather obvious fact.[27/] In brief, it is here fully recognized that NYT owes its primary allegiance to the providing of telephone service, but it would appear that with a relatively small effort and a degree of liberalization of Company policies several improvements could be made in the relationship between the parties to NYT's pole attachment agreement.

CATV shows the frustration of one absolutely dependent upon the resources and cooperation of another whose time and attention is frequently diverted elsewhere. CATV has also given the impression, however, that it has every right to the protection and paternalism normally accorded a younger brother. CATV has demanded that things be done for it that it should do for itself. For example, it is here believed that those concerns expressed by the utilities with respect to their easements and relations with private property owners are well taken. Both Hoffman decisions, supra, have been studied and it is difficult to see why CATV companies should

27/ Association Witness Miron gave some testimony on this subject with respect to NYT, and the Association argued that Niagara Mohawk also inspects its own plant while inspecting CATV. Niagara Mohawk replied that the record does not support that allegation; logic would indicate that all utilities likely benefit from surveys and inspections.

be relieved of their obligation to obtain property rights wherever that effort is required. Wherever easements can be apportioned CATV is in a preferred position to the extent that it does not have to purchase additional rights from property owners or condemn property. Even in those cases, however, CATV is not relieved of the responsibility of ascertaining its own needs and undertaking whatever procedures are appropriate to inform or to negotiate with property owners. It would appear that CATV can do more to develop and soothe those relationships. With respect to guying and anchoring, all utilities should share unused capacity with CATV; to do otherwise would be wasteful. Again, however, there is no reason to exempt CATV from solving its own right-of-way problems including the installation of new guys and anchors. If CATV requires the capacity, then CATV should provide it.[28/] The more CATV can do for itself, the more it can eliminate delay at the hands of others

CATV decries the fact that it is merely accommodated by the utilities, yet it appears to pursue its goals oblivious to the priorities the utilities are under mandate to maintain. For example, the Association made a major issue of the private contractor matter, and it here agreed that there is room for exploration in this area. However, the Petitioner seems to ignore the overriding fact that NYT is absolutely responsible for meeting service standards, and it remains responsible no matter what labor source is employed. It would be a highly questionable regulatory practice to force the

28/ CATV has taken issue with different items of cost incurred as a result of attachment (post-attachment makeready, for example). A similar conclusion is compelled; if cost would not be incurred but for CATV's presence, then it should be CATV's obligation.

use of non-Company labor while imposing absolute responsibility for the result. Similar observations could be made with respect to the complaint about personnel transfers; this complaint, however, only detracted from the Association's case.

The Examiner is not here willing to ascribe to NYT the anti-competitive tactics or the abuse of monopoly power as charged by the Association.[29/] While differences and frictions will arise in any business relationship, it is apparent that the Association would not have pursued this very costly and time-consuming procedure if its members did not feel honestly and intensely that they had been aggrieved. In view of the jurisdictional limitations, however, the purpose here is less to address old grievances than it is to see if steps should be taken which will eliminate or reduce future ones.

Some of the utilities have argued that not only is there no basis on which jurisdiction can be assumed, there is no need for jurisdiction. In this connection it was argued that even if CATV cannot obtain permission to erect its own poles, it can underground its plant thereby avoiding pole attachment problems and the need to invoke regulatory jurisdiction over pole attachments.

29/ The Petitioner cited the FCC's findings in Better TV, Inc. v. New York Telephone Co., 31 FCC 2d 939, as support for the proposition that NYT pursued anti-competitive policies. The issues considered in that case, however, were not before the Examiner in this proceeding.

Like the utilities, CATV requires a right-of-way for the placement of a distribution system which is similar to that employed by the utilities. Being a new industry in a day of environmental concern, CATV is precluded from developing new right-of-way given the fact that there is existing right-of-way entirely suitable for CATV's purposes. Environmental factors aside, the utilities have found it to their advantage to share and the same logic compels CATV to share existing right-of-way. While some distribution systems are being undergrounded today, for the most part distribution is by aerial plant. The undergrounding of new facilities in rights-of-way servicing existing overhead plant would likely cause more environmental disruption at greater cost than would mere attachment to existing poles. In fact, franchising authorities are likely to demand that CATV utilize plant already accommodating utility distribution systems.[30/] It must be concluded that CATV has an absolute need to attach to poles wherever poles are used by the utilities. The need is a public need as was established by the Legislature through the enactment of Article 28 of the Executive Law.

CATV's absolute dependence on utility rights-of-way and utility plant along with the fact that the Legislature has singled out

30/ In this connection, see: PSC's order in Case 26900 (ORDER PROHIBITING DUPLICATE POLE LINE CONSTRUCTION AND CONDITIONALLY INSTITUTING INVESTIGATION) involving NYT and Niagara Mohawk.

cable television service as embracing special public interest considerations would indicate that regulatory jurisdiction should be extended to insure that access to utility property be maintained under reasonable terms and conditions.

The facts that complaints thus far have largely been directed toward one utility and that other utilities have good relationships with CATV companies are strong arguments against the extension of jurisdiction, but they are not compelling arguments. In the first place, no utility today can guarantee what its future position will be when managerial changes put decisional power in the hands of other men. Significant problems could arise without a forum to resolve them. In the second place, NYT has assumed the responsibility of administering CATV agreements where poles are jointly owned with electric companies, and because of its large service area the Company is much more involved with CATV than any other utility. These considerations likely contribute to the fact that it has been the primary object of the complaints raised. CATV's financial posture is not a relevant consideration with respect to the need for regulatory jurisdiction over pole attachment and related agreements. Jurisdiction would be designed to protect the public interest considerations implicit in CATV's service. Any financial benefits accruing to CATV as a result would be incidental. It may be argued that further regulation would be an increased burden to the utilities. The PSC now has regulatory power over pole attachment agreements between utilities; thus far the burden appears to be relatively light. Admittedly, it is here impossible to quantify that burden as to the future.

A number of complaints have been raised and discussed on this record. Some have been inconsequential; others have been

quite significant with a possible impact on CATV's future development. Also significant is the fact that the parties were unable to resolve their differences through negotiation. This failure plus some recognition of the prevailing attitudes offers some insight into why there were complaints and what should be done about the future. The utilities are adamant in the protection of their property and service. Since the utilities are answerable to regulatory authority for the rendition of jurisdictional services, this attitude is understandable. CATV also sees its service as one imbued with public interest considerations, and it believes that this fact should compel more concessions than the utilities feel their primary calling will permit. CATV cannot compel concessions and it cannot turn to an alternate source for its needs. It is here believed that concessions may be possible which will satisfy CATV's needs and yet be consistent with the utilities public interest responsibilities. Those concessions will not be forthcoming, however, until a vehicle has been provided whereby the regulator to whom the utilities are responsible can approve any action which may reasonably affect the utility service now regulated.

In view of the foregoing it is here concluded that the Legislature should be petitioned for a grant of regulatory jurisdiction over pole attachment and related agreements between CATV operators and telephone and electric utilities.

## CONCLUSIONS AND RECOMMENDATIONS

In view of the legal precedent that has been cited herein, it has been concluded that neither the New York State Commission on Cab Television nor the New York State Public Service Commission has jurisdiction over pole attachment and related agreements between utilities and operators of Community Antenna Television Systems except that both commissions have limited jurisdiction to investigate these relationships and the Public Service Commission has further limited jurisdiction to insure the adequacy of utility service and to protect the interests of utility ratepayers. It is further concluded, therefore that neither commission has the jurisdiction to entertain the various complaints that have been filed by the New York State Cable Television Association by a Petition dated March 26, 1973. It is further concluded however, that by the enactment of Article 28 of the Executive Law, the Legislature has found that the various services provided by Community Antenna Television Systems are uniquely possessed of public interest considerations and that those services cannot be rendered unless those entities providing them can have access under reasonable terms and conditions to utility pole plants and other distribution facilities where appropriate. It is further concluded that the Legislature should be petitioned for a grant of jurisdiction over pole attachment and related agreements in order to ensure the promotion and growth of such systems and such services.

Accordingly, therefore, it is recommended that the various complaints set forth in the Petition for Investigation dated March 26, 1973 be hereby dismissed for a lack of jurisdiction.

It is further recommended that the New York State Public Service Commission, being the state agency charged with the regulation of utilities offering essential services, and, therefore, being uniquely concerned with the adequacy of such vital services, petition the Legislature for a grant of jurisdiction to it to exercise authority as necessary and appropriate over pole attachment and related agreements involving Community Antenna Television Systems, and that such jurisdiction be exercised only in consultation with the New York State Commission on Cable Television.

July 13, 1976
TRM:bk:lma

## APPENDIX

In their order of appearance, the following witnesses presented testimony in the subject proceeding:

1. Charles Christiansen, Chief Engineer for Capital District Better TV, Inc., and Capitol Cablevision Systems, Inc., Albany, New York. Witness Christiansen sponsored 12 pages of prefiled testimony which detailed experiences with NYT and Niagara Mohawk. Specifically, Witness Christiansen discussed inaccuracies in makeready estimates, problems where licenses were granted but makeready work was not yet completed, problems associated with guying and anchoring, billing problems and delays with respect to the completion of makeready work.

2. John Lazor, President of People's Cable Corporation, Penfield, New York. Witness Lazor testified with respect to the difficulties encountered between his company and the Fairport Municipal Commission. As was stated in footnote 2, that complaint was later withdrawn.

3. Irving J. Toner, President, Warsaw Television Cable Corporation, Warsaw, New York. Witness Toner testified with respect to difficulties encountered in executing a pole attachment agreement with RTC. Cross-examination developed that some unauthorized attachments had been made which resulted in an injunction against the CATV company prohibiting further attachment and directing removal of

existing attachments. At the time that Witness Toner was heard his company was operating through facilities leased from RTC, and he was in the process of negotiating the purchase of those facilities.

4. Irwin V. Polinsky, an attorney residing in Fort Salonga, New York, had been associated with different CATV companies on Long Island in a managerial capacity. Testifying with respect to past experiences, Witness Polinsky was critical of the length of time NYT required to process pole attachment agreements and the length of time required for surveys and makeready work. Witness Polinsky was also resentful of the fact that the utilities regarded CATV's use as secondary or an accommodation. With respect to guying and anchoring, Witness Polinsky indicated a preference for NYT to install a second anchor as part of the makeready work, and he noted that NYT had insisted that easements be obtained before licenses would be issued with respect to poles requiring guying.

5. Harry C. Calhoun, General Manager, U. S. Cablevision Corporation, Beacon, New York. Concentrating on his relationship with NYT, Witness Calhoun discussed difficulties with billing, overestimates for makeready work, delays in the execution of agreements and in licensing procedures and difficulties in knowing how licensees are to maintain their attachments under the technical criteria set forth in the appendix to the pole attachment agreement.

6. Earl Quam, Chief Engineer, Brookhaven Cable TV, Port Jefferson Station, New York. Witness Quam participated in the drafting of a buried agreement which was proposed by the Petitioner, and he was cross-examined on that subject.

7. Thomas J. O'Keefe, Vice President and General Manager, Kingston Cablevision, Kingston, New York. Witness O'Keefe testified with respect to a delay of 26 months in obtaining pole attachment licenses for poles located in the towns of Hurley, Esopus and Ulster.

8. Robert Miron, Operations Manager, New Channels Corporation, Syracuse, New York. Sponsoring 21 pages of prefiled testimony in the Petitioner's direct case, Witness Miron addressed a situation in which NYT conducted a survey at a cost deemed exorbitant by the witness. He also discussed inaccurate billing for makeready work, and he presented opinions with respect to various provisions appearing in NYT's pole attachment agreement. Witness Miron also appeared in rebuttal. In this context, he testified with respect to inspection policies, the possibility that CATV companies are being charged to correct violations on NYT's plant, difficulties in obtaining a pole attachment agreement for the City of Cohoes, and NYT's willingness to waive the advance payment requirement for makeready work when such is in the Company's interest.

9. Edwin C. Engborg, Jr., General Staff Engineer, Operations, Planning and Engineering Department, NYT. Witness Engborg sponsored 79 pages of testimony comprising NYT's direct case including some rebuttal testimony. Witness Engborg explained in some detail the rationale underlying the Company's policies and practices with respect to licensees as well as the rationale upon which contract provisions are based.

10. Dominic Albanese, Manager (Administrative Engineering), Niagara Mohawk. Witness Albanese testified with respect to Niagara Mohawk's practices and policies on pole attachments by CATV licensees, and rebuttal testimony was offered with respect to some of the direct testimony presented by Petitioner Witnesses Christiansen and Miron.

11. Douglas E. Sieg, Senior System Planner, Department of Public Service. The several recommendations advanced by Witness Sieg are summarized in the body of this Recommended Decision.

12. Barry Wilson, Project Manager, Jackson Communications Corporation, Clayton, Ohio. Witness Wilson's testimony is summarized in the body of this Report.

13. Richard L. Jackson, President, Jackson Communications Corp., Clayton, Ohio. Witness Jackson testified with respect to the possibilities of using private contractors in performing surveys and makeready work. A portion of this testimony was rebuttal testimony to that presented by NYT Witness Engborg.